

Appl. No. 10/783,649
Amdt. Dated December 30, 2008
Reply to Office Action of June 30, 2008

REMARKS/ARGUMENTS

Claims 1-12 were pending in this application. Claims 1-12 stand rejected under 35 USC 103(a) over Engleson et al. US 7,117,041 in view of Eggers et al. US20060106649 and in further view of Bourget US 6,647,299. This rejection is respectfully traversed for the reasons stated below.

Claims 1 and 12 have been amended to clarify that an audio location alarm signal is generated by the program code of the medical device itself and output as an audio alarm from or at the medical device itself. These changes are supported by FIG. 21 and paragraphs [0107]-[0110] of the original specification as published. It should also be understood in view of the specification and drawings of the present application that the medical devices being located are not necessarily implantable and that the problem solved is not one of ensuring proper relative positioning of an implantable device with respect to an external programmer for telemetry programming of the implantable device. Instead, the present invention simultaneously solves several different problems that can often exist with relatively expensive portable medical devices, which may also be substantially identical and thus visually indistinguishable from one another. Since they are portable, such medical devices can be carried off to new areas, stored or misplaced out of easy sight (such as in drawer, in a storage closet, or on a high shelf), or simply confused with other medical devices located in the same private or semi-private room or multiple patient treatment area. The present invention helps a searcher pinpoint the exact current physical location and identity of the medical device. It is particularly useful in locating "lost" or misplaced devices when the last node the device accessed does not tell the whole story.

Engleson et al. disclose a system and method for programming a medical device, which includes the suggestion of communicating with the medical device through a wireless access node, but (as the Examiner acknowledges) fails to disclose using the last used access node to determine the location of the medical device, as required by claims 1 and 12. The Examiner relies on Eggers et al. to show or suggest the use of a current access node used to determine a general location of the device. The general location is used for configuring the device and could be identified in reports. However, as the Examiner admits, the combination of Engleson et al. and Eggers et al. fails to show or suggest an audio alarm signal being activated to pinpoint the exact location of the medical device.

The Examiner relies on Bourget for disclosure regarding "employing an audio signal

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or alarm to assist in locating a medical device." However, it is respectfully submitted that this reliance is misplaced with respect to the present invention, as stated in amended claims 1 and 12. Column 3, lines 45-55 of Bourget make it clear that it is the external programmer rather than the implantable medical device (IMD) that provides an audio signal. The external programmer "resonates audio tones that may vary in frequency depending on the relative position of the programmer and the implanted device. Once the desired telemetry location is located, the programmer notifies the patient to that effect through the use of another audio indicator."

One skilled in the art would be disinclined to have the IMD itself provide an audio location alarm signal as an in-body signal would require increased power, components, and size for the IMD and such a signal would be far less likely to be effectively discerned or heard by the user than a signal from the external programmer. By contrast, in the presently claimed invention, the exact pinpoint location of the medical device is determined by the medical device itself activating and generating an audio location alarm signal. The alarm signal does not rely on the proximity of another device or that the location of the device has already been "pinpointed" to a particular patient's body. Thus, it can be seen that the combination suggested by the Examiner fails to result in the claimed invention and one skilled in the art would be disinclined, absent the impermissible use of hindsight in view of the present invention, to utilize audio alarm signals from a medical device itself for purposes of pinpointing its current location in a complex hospital environment.

It is respectfully submitted that claims 1 and 12 are patentable over the cited references. Claims 2-11 depend from claim 1 and at least derive their patentability therefrom.

New claims 13-16 are also submitted for consideration. Claims 13 and 15 are supported by paragraph [0062] of the original specification as published. Claims 14 and 16 are supported by paragraph [0109].

A Petition for Extension of Time by three (3) months from September 30, 2008 to December 30, 2008 is submitted herewith along with the authorization for payment of the appropriate fees. No further extensions or fees are believed to be due in connection with this paper. However, the Commissioner is authorized to consider this a request for any necessary extension and charge our Deposit Account, 50-3118 for any additional fees (or credit any over payments) in association with this communication.

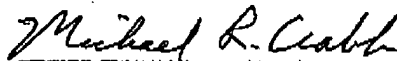
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A timely and favorable response on the merits of the claims as amended is respectfully requested.

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Respectfully submitted,
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